BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHAKETHA JOHNSON	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,027,707
WAL-MART	)	
Respondent	)	
AND	)	
	)	
AMERICAN HOME ASSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the May 23, 2006, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

Judge Clark determined claimant injured herself while working for respondent on January 28, 2006, and, consequently, granted claimant's request for preliminary hearing benefits.

Respondent and its insurance carrier contend Judge Clark erred. They argue claimant's accident and resulting injury did not arise out of her employment as claimant had clocked out and was intending to purchase an item when she fell and injured herself. Accordingly, respondent and its insurance carrier contend claimant's accidental injury is not compensable under the Workers Compensation Act as she was injured while on a personal errand. In short, they request the Board to reverse the May 23, 2006, Order.

Conversely, claimant contends the Order should be affirmed. Claimant argues she was on respondent's premises intending to leave the store at the time of her injury and the brief deviation for the purpose of shopping was not a sufficient deviation to deny compensation under the "going and coming" rule of K.S.A. 2005 Supp. 44-508(f). In her brief to this Board, claimant argued, in part:

> Judge Clark's rationale in concluding that the claimant's injuries are compensable is based upon the opinion of the Supreme Court in *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995) in which the Court held that a four

> (4) hour deviation from the claimant's approved route of travel for the purpose of pleasure unrelated to employment was not sufficient to deny compensation for the claimant's death. Judge Clark reasoned that the claimant's deviation in the instant case was much more ephemeral than that involved in *Kindel* and that, *a fortiori*, claimant's injuries are compensable.[1]

In the alternative, claimant argues she was accompanying her son while he was shopping and, therefore, she was serving the respondent's interests. Accordingly, claimant contends her accident occurred during a dual purpose excursion and, therefore, it is compensable under the Workers Compensation Act.

The only issue before the Board on this appeal is whether claimant's accident arose out of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the preliminary hearing Order should be affirmed.

Respondent employed claimant as a cashier in one of its "Super Center" stores. On January 28, 2006, claimant fell and injured her neck and back after she had clocked out at the end of her shift. Claimant testified, as follows:

> I got ready to clock -- went back -- as 9:30 came, I went back to clock out, I came toward the front, and as I was -- as I proceeded to the front, I went by the cash register, I was on my way by the cash register when someone told me my son was looking for me, I heard it over the PA, and then I just came on out by the cash register, slipped, lost my balance on a bracket, and fell.[2]

The evidence establishes that claimant clocked out at 9:24 p.m. And the records of the Sedgwick County EMS disclose that it received a call from respondent's store at about 10:10 p.m. and arrived at the store at about 10:15 p.m. In addition, respondent's assistant manager, Lorna Cherry, testified that about 10:00 p.m. she received an alert of an injury and she rushed to the front of the store where she found claimant sitting on the floor.

Claimant concedes she had briefly deviated from the act of leaving respondent's premises when the accident occurred. But claimant contends the deviation was so insignificant it should not defeat her claim for workers compensation benefits.

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[1] Claimant's Brief at 2 (filed June 21, 2006).

[2] P.H. Trans. at 7-8.

> Claimant's position is that at the time of her injuries she was on the respondent's premises intending to leave her place of employment and that the brief deviation for the purpose of shopping was not a sufficient deviation to deny compensation. The statute relevant to the resolution of this issue is K.S.A. 44-508(f) which provides . . . .[3]

The Board agrees with claimant's analysis. K.S.A. 2005 Supp. 44-508(f) codifies the Kansas "going and coming" rule. In essence, that statute generally provides that employees shall not be considered as having left their duties when the worker remains on the employer's premises. That general rule, however, does not automatically entitle employees to workers compensation benefits for all accidents that occur on an employer's premises as the accident must still somehow relate to the employment. In other words, the accident must arise out of and occur in the course of employment.[4] And each determination must be made on a case-by-case basis. In short, the outcome is profoundly fact-driven.

Claimant fell near the checkout stands near the front of the store. She had not abandoned her intent to depart respondent's premises. The Board concludes claimant's brief deviation from departing respondent's premises was so insignificant in time and degree that claimant should not be denied compensation.

The Board affirms Judge Clark's finding that claimant's accident arose out of her employment with respondent.

WHEREFORE, the Board affirms the May 23, 2006, Order.

IT IS SO ORDERED.

Dated this ____ day of July, 2006.

BOARD MEMBER

c: E. L. Lee Kinch, Attorney for Claimant
Kendall R. Cunningham, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[3] Claimant's Brief at 2 (filed June 21, 2006).

[4] K.S.A. 2005 Supp. 44-501.